

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

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ROBERTO ANTONIO MIRON CASTILLO,	:	
	:	
Plaintiff,	:	MEMORANDUM DECISION
	:	AND ORDER
- against -	:	
	:	20-CV-00706 (AMD) (JO)
JIMMY G CONSTRUCTION CORP., et al.,	:	
	:	
Defendants.	:	
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ANN M. DONNELLY , United States District Judge:		

On February 7, 2020, the plaintiff brought this action against his employers, alleging violations of the Fair Labor Standards Act and New York Labor Law. (ECF No. 1.) The plaintiff served the defendants on February 13, 2020. (ECF Nos. 5, 6.) Neither defendant responded to the complaint.

On March 19, 2020, Magistrate Judge James Orenstein ordered that “one of the following events must occur” by April 2, 2020: “(a) the defendants must file an answer, (b) the parties must file a stipulation extending the defendants’ time to answer, or (c) the plaintiff must file a request for a certificate of default.” On April 2, 2020, the plaintiff requested a certificate of default (ECF No. 9), which the Clerk entered (ECF No. 10), and on May 15, 2020, the plaintiff moved for default judgment (ECF No. 12). I referred the motion to Judge Orenstein for a report and recommendation.

Judge Orenstein directed the plaintiff to submit any written materials in support of his motion on or before June 5, 2020, and scheduled a damages inquest for August 4, 2020. The plaintiff did not submit any materials, and on July 31, 2020, the plaintiff’s counsel requested that Judge Orenstein adjourn the hearing because counsel was unable to reach or locate the plaintiff.

(ECF No. 14.) Judge Orenstein denied the request because “[t]he plaintiff has an obligation to remain in contact with his counsel and to be available for the damages inquest if he wishes to prosecute the case,” and said that if the plaintiff did not appear, he would schedule one additional conference before recommending that the Court dismiss the complaint for failure to prosecute. Judge Orenstein held hearings on August 4 and August 19, 2020. The plaintiff did not appear at either hearing.

On October 27, 2020, Judge Orenstein issued a well-reasoned Report and Recommendation, in which he recommends that I deny the plaintiff’s motion for default judgment and instead dismiss the complaint without prejudice for failure to prosecute. (ECF No. 18.) Judge Orenstein observes that the plaintiff has allowed his claims to lie dormant for more than five months, and has not appeared for conferences, despite the Court’s warnings that such behavior could result in dismissal of his claims. (*Id.*) No party has filed any objections to Judge Orenstein’s Report and Recommendation, and the time to do so has passed.

A district court “may accept, reject, or modify, in whole or in part, the findings or recommendations made by the magistrate judge.” 28 U.S.C. § 636(b)(1). “To accept the report and recommendation of a magistrate, to which no timely objection has been made, a district court need only satisfy itself that there is no clear error on the face of the record.” *Jarvis v. N. Am. Globex Fund, L.P.*, 823 F. Supp. 2d 161, 163 (E.D.N.Y. 2011) (quoting *Wilds v. United Parcel Serv.*, 262 F. Supp. 2d 163, 169 (S.D.N.Y.2003)) (internal quotation marks omitted).

I have reviewed Judge Orenstein's thoughtful Report and Recommendation and find no error. Accordingly, I adopt it in its entirety. The plaintiff's motion for default judgment is denied, and this case is dismissed without prejudice for failure to prosecute. The Clerk of Court is respectfully directed to close this case.

SO ORDERED.

s/Ann M. Donnelly

ANN M. DONNELLY
United States District Judge

Dated: Brooklyn, New York
November 16, 2020